

REMARKS/ARGUMENTS

The Office has required restriction in the present application as follows:

Group I, Claims 1-5, drawn to a recombinant microorganism for the preparation of D-amino acids.

Group II, Claims 6-9, drawn to a process for preparing D-amino acid using the microorganisms of Group I.

Applicants elect, with traverse, Group I, Claims 1-5, drawn to a recombinant microorganism for the preparation of D-amino acids wherein genes encoding D-amino acid oxidase or D-serine dehydratase is inactivated by mutagenesis.

The Examiner has indicated that invention Groups I and II are unrelated in that a single inventive concept under PCT Rule 13.1 is lacking and that under PCT Rule 13.2 they lack the same or corresponding "special technical features". Group I product can be used in other processes having different technical features such as to produce enzymes. Furthermore the recombinant microorganism of Group I does not constitute a "special technical feature", since they do not define a contribution over the prior art. This is evidenced by the Marceau et al. article (JBC 1988, pp. 16926-33).

Applicants respectfully traverse the restriction requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups or shown that a burden exists in searching all of the claims. While the Examiner has indicated that the microorganisms of Group I can be used in other processes such as to produce enzymes he has provided no scientific articles showing how these microorganisms would be used in other processes to produce enzymes. Furthermore Applicants point out that their recombinant microorganism is a contribution over the art, since the Marceau article does not disclose the preparation of D-amino acids starting with n-carbamoyl amino acids or 5-monosubstituted hydantoins. Since Applicants' claimed

inventions do describe an improvement over the prior art, the restriction is considered improper and should be withdrawn.

Applicants respectfully point out that an International or National stage application containing claims to different categories of inventions such as a product and a process specifically adapted for the manufacture of said product do have Unity of Invention under 37 C.F.R. §1.475. Since Applicants' Group I and II specifically falls within this category, Unity of Invention is present and both Groups should be examined in one patent application.

Moreover the M.P.E.P. in §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the examiner must examine it on its merits even though it includes claims to distinct or independent inventions.

Applicants respectfully submit that a search of all of the claims would not impose a serious burden on the Office. In this regard it is pointed out that the International Search Authority searched both invention groups in one PCT application.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the restriction requirement.

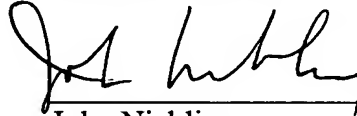
Withdrawal of the restriction requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits and early notice of such action is earnestly solicited.

Respectfully submitted,

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